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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

v.

Peter Biar Ajak,

Defendant.

CR-24-00394-PHX-SPL-2

**DEFENDANT AJAK'S REPLY TO  
GOVERNMENT'S RESPONSE TO MOTION  
TO DISMISS THE SUPERSEDING  
INDICTMENT FOR SELECTIVE  
PROSECUTION IN VIOLATION OF THE  
EQUAL PROTECTION COMPONENT OF  
THE DUE PROCESS CLAUSE OF THE  
FIFTH AMENDMENT; OR IN THE  
ALTERNATIVE, DEFENDANT AJAK'S  
MOTION FOR DISCOVERY AS TO  
PROSECUTORIAL INTENT**

(Oral Argument and Evidentiary Hearing  
Requested)

Peter Biar Ajak, by and through undersigned counsel, files this Reply to the Government's Response to Defendant's Selective Prosecution Motion.

This Reply and its requested relief are supported by the attached Memorandum of Points and Authorities.

Excludable delay under 18 U.S.C. § 3161(h)(1)(D) may result from this motion.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of July 2025.

**KURT M. ALTMAN, P.L.C.**

/s/ Kurt M. Altman

Kurt M. Altman

*Attorney for Defendant*

I hereby certify that on the 16<sup>th</sup> day of July 2025,  
I electronically transmitted the attached  
document to the Clerk's Office using the  
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**MEMORANDUM OF POINTS AND AUTHORITIES****I. PROCEDURAL BACKGROUND:**

On March 1, 2024, Mr. Ajak (and his co-defendant, Mr. Abraham Chol Keech) were arrested by agents of the Department of Homeland Security while visiting Phoenix, Arizona. The arrest was based on a federal criminal complaint signed by United States Magistrate Judge Michael T. Morrissey on February 29, 2024. The complaint included three violations of United States criminal code. Count One alleged a violation of 22 U.S.C. §§ 2778(b)(2), (c), Conspiracy to Violate the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR); Count Two alleged a violation of 50 U.S.C. §§ 4819(a)(1), 4819(a)(2)(D), and 4819(b), Conspiracy to Violate the Export Control Reform Act (ECRA) and the Export Administration Regulations (EAR); and Count Three alleged a violation of 18 U.S.C. § 544(a), Smuggling of Goods from the United States.

Mr. Ajak had his initial appearance on March 4, 2024, before United States Magistrate Judge Deborah M. Fine, and she set a Detention Hearing for March 8, 2024. After filing of the Indictment (ECF No. 14) on March 6, 2024, which alleged identical allegations as the criminal complaint, an Arraignment and Detention Hearing were held on March 15, 2024, before United States Magistrate Judge Eileen S. Willett.

On April 30, 2025, the Grand Jury issued a Superseding Indictment against Mr. Ajak and his co-defendant, again charging them with four violations of Federal law: Count 1, Conspiracy, in violation of 18 U.S.C. § 371; Count 2, Conspiracy to Violate the Export Control Reform Act (ECRA) and the Export Administration Regulations (EAR), in violation of 50 U.S.C. §§ 4819(a)(1), 4819(a)(2)(D), and 4819(b); Count 3, Smuggling of Goods from the United States, in violation of 18 U.S.C. § 554(a); and Count 4, Conspiracy to Export Missile Systems designed to Destroy Aircraft, in

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violation of 18 U.S.C. §§ 2332g(a)(1), 2332(b)(1), and 2332g(c)(1). Both defendants were arraigned on May 7, 2025.

## **II. DISCRIMINATORY EFFECT:**

Pages 3 through 7 of the Government's Response to Defendant's Selective Prosecution Motion (DKT 128) lay out detailed facts of both defendant Ajak and Keech's conduct that the Government believes will be proved at trial. However, nowhere within the Response does the Government dispute the co-conspirators'<sup>1</sup> factual involvement as detailed in Mr. Ajak's Motion to Dismiss for Selective Prosecution (DKT 87). One co-conspirator (co-conspirator #1), knowing details of the overall plan, actively participated in the conspiracy. Co-conspirator #1 met with Mr. Ajak and others, on numerous occasions, and worked to secure sources of funding for the weapons. He was integrally aware of the alleged plan and was even provided details through a PowerPoint presentation that was shown in the New York City offices of the Paul Hastings law firm. He used his position with the Human Rights Foundation to conceal the true purpose of the money that *he* acquired from the funder *he* personally recruited. He also used his political clout to set up meetings that others could not. The alleged conspiracy was impossible without his participation.

Another co-conspirator (co-conspirator #2) was recruited, provided knowledge of the plan, and agreed to finance the purchase of military grade weapons to aid in the installation of a democratic government in South Sudan. He had the willingness and ability to provide the financing for the plan, and he agreed to do so. Without the significant financing of co-conspirator #2, the alleged conspiracy would have been impossible.

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<sup>1</sup> For purposes of this Reply, Mr. Ajak will refer to all four co-conspirators identified in his original Motion to Dismiss collectively as "co-conspirators."

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1 Another co-conspirator (co-conspirator #3) is an attorney, and she was deeply involved in the  
2 alleged conspiracy in this matter. She arranged, scheduled, attended, and coordinated activities at  
3 numerous in-person planning meetings of the alleged co-conspirators. Those meetings included not  
4 only herself but the other unindicted co-conspirators. During those meetings, every aspect of the  
5 alleged conspiracy was discussed—*Who could provide financing and how to get it. What type of*  
6 *weapons may be needed and where they could be purchased. What equipment was needed on the*  
7 *ground in South Sudan and how to get it there. What personnel were required both here in the*  
8 *United States and in the South Sudan to make the transition successful.* She reviewed a PowerPoint  
9 presentation that laid out the plan for installation of a new government in South Sudan and made  
10 suggestions and advised of possible pitfalls and ramifications of that plan. She drafted the contract,  
11 termed “Donation Agreement,” that was used to transfer the money provided by co-conspirator #2.  
12 Her internet research history shows she conducted searches for “coup” in a foreign land and  
13 researched the potential legal ramifications of such in the United States. The alleged conspiracy was  
14 impossible without her significant contributions.  
15

16  
17 Finally, another co-conspirator (co-conspirator #4) was heavily involved in and  
18 knowledgeable of the plan. He had the public relation skills to assist in publicly promoting the new  
19 democratic government once installed. He conveyed to the other co-conspirators that he was  
20 instrumental in doing this type of work previously in the country of Gabon. He alluded to the other  
21 co-conspirators that he worked for, or closely with, the Central Intelligence Agency and that his  
22 participation in the plan would be essential to United States government support moving forward after  
23 installation of a new government in South Sudan. He attended meetings of the co-conspirators,  
24 planned, strategized, and was provided a copy of the PowerPoint presentation laying out the plan. He  
25 was even paid for his active contributions to the conspiracy.  
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1 In its Response, the Government ignores the involvement of all the co-conspirators and argues  
2 that Defendant cannot show discriminatory effect because these four individuals are not “similarly  
3 situated” to defendants who were “ringleaders.” It is true that to obtain a dismissal of a prosecution  
4 based on violation of the Due Process Clause of the Fifth Amendment, the defendant must establish  
5 two things by “clear evidence.” *United States v. Armstrong*, 517 U.S. 456, 464 (1996). First, that the  
6 decision to prosecute “had a discriminatory effect and, [second,] that it was motivated by a  
7 discriminatory purpose.” *Id.* at 465. “To establish a discriminatory effect in a race case, the claimant  
8 must show that similarly situated individuals from a different race were not prosecuted.” *Id.*, citing  
9 *Ah Sin v. Whittman*, 198 U.S. 500 (1905).  
10

11 Considering the involvement of the four co-conspirators, the Government’s argument that  
12 they were not “similarly situated” fails. “Conspiracy” is “a combination of confederacy between two  
13 or more persons formed for the purpose of committing, by their *joint efforts* some unlawful or  
14 criminal act.” <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf>  
15 Without the *joint efforts* of all the co-conspirators the conspiracy to purchase weapons and conduct a  
16 coup in South Sudan could not have come to fruition. Members of a conspiracy, by definition, carry  
17 out different roles, but each one is necessary to achieve the goal.  
18

19 That is the case here. According to the Government, Mr. Ajak and Mr. Keech played vital  
20 roles. But they could not and did not operate in a silo, and their roles were no more vital than the co-  
21 conspirators because without them the project was impossible. To accept the Government’s argument  
22 is like saying a baseball pitcher, a vital member and even a leader of a baseball team, is the entire  
23 reason the team won a championship. However, that pitcher alone couldn’t win any game without the  
24 equally important though different efforts of the catcher, the outfielders, the infielders, or the coach.  
25 Each player, though operating in a different role, is vital to the overall *joint effort* required to achieve  
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1 their goal. That is the same situation the co-conspirators are in here. Each had a different role, but  
2 each role was vital to the overall *joint effort* to accomplish the goal of the conspiracy. That makes the  
3 co-conspirators' involvement in this alleged crime similarly situated to the involvement of both Ajak  
4 and Keech. Each co-conspirator was an indispensable part of the conspiracy, necessary for its overall  
5 success. The co-conspirators' involvement was just as serious criminal conduct as the alleged  
6 involvement of Defendants. The only fathomable distinction is the color of their skin.

7  
8 The Government's reliance on *United States v. Rundo*, 108 F.4<sup>th</sup> 792 (9<sup>th</sup> Cir. 2024) is  
9 misplaced. As the Government points out, the defendants in that case argued that other groups were  
10 not prosecuted for similar conduct because of their "far-left-wing" political views, while defendants  
11 faced prosecution only because they held opposing political views. *See Rundo*, 108 F.4<sup>th</sup> at 801-03.  
12 However, unlike in this case, the *Rundo* defendants were not part of the same conspiracy as the  
13 individuals who were not prosecuted. The unprosecuted "far-left-wing" activists were not vital to the  
14 *joint effort* of the *Rundo* defendants. Here, the co-conspirators were part of the same alleged  
15 conspiracy, and they were vital to its ongoing efforts and success. Here, the co-conspirators' conduct  
16 was just as criminally serious, making them similarly situated to Defendants. The only distinction is  
17 they are not black. Therefore, based on the undisputed conduct of the co-conspirators, the  
18 Government's decision to only charge the black members of the conspiracy establishes the  
19 discriminatory effect required in a selective prosecution claim. "To establish a discriminatory effect  
20 in a race case, the claimant must show that similarly situated individuals from a different race were  
21 not prosecuted." *Armstrong*, 517 U.S. at 465 (citing *Ah Sin v. Whittman*, 198 U.S. 500 (1905)).  
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### 24 **III. DISCRIMINATORY PURPOSE:**

25 As discussed in Mr. Ajak's Motion to Dismiss (DKT 87), the second requirement of a  
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1 successful selective prosecution claim—discriminatory purpose—also exists in this case. “The goal  
2 of identifying a similarly situated class of law breakers is to isolate the factor allegedly subject to  
3 impermissible discrimination. The similarly situated group is the control group.” *United States v.*  
4 *Wilson*, 123 F.4<sup>th</sup> 1021, 1027 (2024). Here, the defendants are the same in all relevant aspects with  
5 members of the control group except for the isolated factor of their skin color. “If all other things are  
6 equal, the prosecution of only those persons exercising their constitutional rights gives rise to an  
7 inference of discrimination.” *Id.* at 1028. In this case, all other things are equal and based on the  
8 undisputed facts, the only people being prosecuted are those of a different skin color. On its face,  
9 there is no other explanation for the selective purpose of the prosecution.  
10

11  
12 At a minimum, a prima facie showing has been made that the purpose of the prosecution  
13 violates the 5<sup>th</sup> Amendment, enough to exceed the “some evidence” standard to receive discovery on  
14 the issue. Discovery related to selective prosecution allegations will be granted only if defendants  
15 first demonstrate “some evidence” of discriminatory effect and discriminatory intent. *See United*  
16 *States v. Armstrong*, 517 U.S. 456, 463 (1996); *see also United States v. Bass*, 536 U.S. 862, 863  
17 (2002) (per curiam). While the discovery standard applicable to selective prosecution claims in  
18 federal court is rigorous, it is “less stringent” than that required to prove a selective prosecution claim  
19 on the merits. *United States v. James*, 257 F.3d 1173, 1178 (10<sup>th</sup> Cir. 2001). As one court observed,  
20 “defendants need not establish a prima facie case of selective prosecution to obtain discovery on these  
21 issues.” *Id.* Based on the uncontroverted facts in Mr. Ajak’s Motion and Reply, there is some  
22 evidence of discriminatory purpose. Enough so to reach the threshold to allow discovery as to the  
23 motivation behind the prosecution.  
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**IV. CONCLUSION:**

For the reasons stated in this Reply to the Government's Response to Selective Prosecution Motion and those stated in Ajak's Motion to Dismiss the Superseding Indictment for Selective Prosecution in Violation of the Equal Protection Component of the Due Process Clause of the Fifth Amendment, or in the alternative, Motion for Discovery as to Prosecutorial Intent, Defendant Peter Biar Ajak, respectfully requests that the Court grant the Motion to Dismiss, or in the alternative, the Motion for Discovery as to Prosecutorial Intent.

Excludable delay under 18 U.S.C. § 3161(h)(1)(D) may result from this motion.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of July 2025.

**KURT M. ALTMAN, P.L.C.**

/s/ Kurt M. Altman

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*Attorney for Defendant*

I hereby certify that on the 16<sup>th</sup> day of July 2025,  
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 document to the Clerk's Office using the  
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 of a Notice of Electronic Filing to the  
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